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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,571	05/15/2007	Tan-Phat La	095309.58086US	9501

23911 7590 02/22/2010
CROWELL & MORING LLP
INTELLECTUAL PROPERTY GROUP
P.O. BOX 14300
WASHINGTON, DC 20044-4300

EXAMINER

LUONG, VINH

ART UNIT	PAPER NUMBER
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3656

MAIL DATE	DELIVERY MODE
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02/22/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/587,571	Applicant(s) LA ET AL.	
	Examiner Vinh T. Luong	Art Unit 3656	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The preliminary amendment filed on July 31, 2006 has been entered.
2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because of the implied phrase "The invention relates to . . ." Correction is required. See MPEP § 608.01(b).

4. The drawings are objected to because of the reasons, *inter alia*, listed below:

(a) The drawings are not in compliance with 37 CFR 1.84. Please see Form PTO-948;

(b) 37 CFR 1.84(h)(3) states:

Sectional views. *The plane upon which a sectional view is taken should be indicated on the view from which the section is cut by a broken line.* The ends of the broken line should be designated by Arabic or Roman numerals corresponding to the view number of the sectional view, and should have arrows to indicate the direction of sight. Hatching must be used to indicate section portions of an object, and must be made by regularly spaced oblique parallel lines spaced sufficiently apart to enable the lines to be distinguished without difficulty. Hatching should not impede the clear reading of the reference characters and lead lines. If it is not possible to place reference characters outside the hatched area, the hatching may be broken off wherever reference characters are inserted. Hatching must be at a substantial angle to the surrounding axes or principal lines, preferably 45°. *A cross section **must** be set out and drawn to show all of the materials as they are shown in the view from which the cross section was taken.* The parts in cross section must show proper material(s) by hatching with regularly spaced parallel oblique strokes, the space between strokes being

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chosen on the basis of the total area to be hatched. (Emphasis added).

However, FIG. 1a does not show the plane upon which the sectional view in FIG. 1b is taken. In addition, FIG. 1b does not show the plastic material of which the indicator 11 is made as claimed in claims 19, 31, and 32;

(c) 37 CFR 1.84(h)(2) states: "When a portion of a view is enlarged for magnification purposes, the view and the enlarged view *must* each be labeled as separate views." In the instant case, the enlarged views in FIGS. 3c, 3d, 4b, and 4c are not labeled as separate views;

(d) FIGS. 3a-3d should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g); and

(e) Each part of the invention, such as, the center point of curvature in claim 15 and the roller in claim 21 should be designated by a reference character. See MPEP §608.01(o).

Please note that MPEP 608.02(b) states: "[t]o be fully responsive, an amendment must include corrected drawings. See 37 CFR 1.85(c) and 37 CFR 1.121(d). The objection to the drawings will not be held in abeyance" and "[a] request to hold objections to the drawings in abeyance will not be considered a *bona fide* attempt to advance the application to final action (37 CFR 1.135(c))." For examples of proper drawings, please see the "Guide for the Preparation of Patent Drawings" available from the USPTO web site at www.uspto.gov.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure

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must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed feature(s) such as the roller in claim 21 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

6. The disclosure is objected to because of the informalities, such as, *e.g.*, listed below:

(a) The Brief Description of the Drawings should describe the plane upon which a sectional view, such as, FIG. 1(b) is taken;

(b) Each part of the invention, such as, the center point of curvature in claim 15 and the roller in claim 21 should be designated by a reference character. See MPEP §608.01(o); and

(c) The disclosure has typographical or grammatical errors, *e.g.* the recitation "a roll" in Spec. ¶ 11 should have been changed to "a roller" and "indicator 13" in Spec. ¶ 20 should have been changed to "indicator 11."

Appropriate correction is required.

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claim 21 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 21 recites “the full load indicator is a roller with a compression spring.” However, the drawings do not show the instant claimed features. It is unclear as to how Applicant made/used the roller with the compression spring as claimed.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 13-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terms “latchable” in claim 13 and “moveable” in claim 17 are vague and indefinite in the sense that things which may be done are not required to be done. For example, in claim 13 the restoring device is latchable, but is not required structurally to be latched to the load indicator. See “crimpable” in *In re Collier*, 158 USPQ 266 (CCPA 1968); “discardable” in *Mathis v. Hydro Air Industries*, 1 USPQ2d 1513, 1527 (D.C. Calif. 1986); “removable” in *In re Burke Inc.*, 22 USPQ2d 1368, 1372 (D.C. Calif. 1992); and “comparable” in *Ex parte Anderson*, 21 USPQ2d 1241, 1249 (BPAI 1992).

It is unclear:

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(a) Which structures define the claimed elements, such as, the center point of curvature in claim 15 and the roller in claim 21. Applicant is respectfully suggested to identify each claimed element with reference to the drawings. See MPEP § 608.01(o); and

(b) Whether the terms that appear at least twice, such as, “a full load indicator” and “a pedal” in claim 22/13 refer to the same or different things. See double inclusion in MPEP § 2173.05(o). Applicant is respectfully suggested to identify each claimed element with reference to the drawings.

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 13-15, 17, 18, 20-25, 28, and 29, as best understood, are rejected under 35 USC 102(a) as being anticipated by Georg (CH 335458 cited in International Search Report).

Claim 13

Georg teaches an accelerator pedal module comprising:

a pedal 1, 22;

a restoring device 5 (FIG. 1), 21 (FIG. 4) for the pedal 1, 22; and

a full load indicator 7-9 (FIG. 1) or 24-26 (FIG. 4), wherein, in a full load position of the pedal 1, 22, the restoring device 5, 21 is *latchable* to the full load indicator 7-9, 24-26.

Claim 14

The full load indicator 7-9 or 24-26 is rod-shaped with a curved contour 7, 10, or 25.

Claim 15

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Toward its free end 8 (FIG. 1), the full load indicator 7-9 has, on a concave surface 7, a step 9 toward a center point of curvature (2).

Claim 17

The restoring device bears 5/21 with a pivotably moveable driver 3, 4 (FIG. 1) or 19, 20 (FIG. 4) against the full load indicator 7-9/24-26 in the full load position.

Claim 18

The full load indicator 7-9/24-26 is *adapted* in its contour to a movement curve of the driver 3, 4 or 19, 20. As noted, an element is “adapted to” perform a function is not a positive limitation but only requires the ability to so perform, thus, it does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138 (CCPA 1946) and MPEP § 2111.04.

Claim 20

The full load indicator 7-9/24-26 is a spring plate.

Claim 21

The full load indicator 7-9 is a roller 5 with a compression spring 6. Alternatively, the full load indicator 24-26 is a roller 21 with a compression spring 23.

Claim 22

The module is a full load indicator 7-9/24-26 for generating a haptically perceptible mechanical resistance in a full load position of a pedal 1/22 and has a belt-shaped base body with a curvature 7/10 along its longitudinal extent.

Claim 23

A step 9 is arranged at an end 8 which is free in the mounted state in such a way that the end 8 is thickened as seen in FIG. 1.

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Claim 24

The curvature 7/10 increases along the longitudinal extent toward the free end.

Claims 25, 28, and 29

See claims 15 and 17.

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

15. Claims 16, 26, 27, and 30, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Georg in view of admitted prior art (*i.e.*, Applicant's FIGS. 3a-3d, hereinafter "APA").

Claims 16, 26, and 27

As noted, Georg's full load indicator and Georg's restoring device are integrated together. It is well settled that the term "integral" or "integrated" is sufficiently broad to embrace constructions united by such means as fastening and welding. See *In re Hotte*, 177 USPQ 326,

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328 (CCPA 1973) and *In re Morris*, 43 USPQ2d 1753, 1757 (CAFC 1997). Integral is not necessarily restricted to one-piece article. *In re Kohno*, 157 USPQ 275 (CCPA 1968).

In summary, Georg teaches the invention substantially as claimed. However, Georg does not teach to integrate the full load indicator with the restoring device into a housing.

APA teaches to integrate the full load indicator 20 with the restoring device 4 into the housing 14 in order to protect the indicator 20 and the restoring device 4.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to integrate Georg's full load indicator with Georg's restoring device into the housing in order to protect the indicator and the restoring device as taught or suggested by APA. The integration of Georg's full load indicator with Georg's restoring device into the housing as taught or suggested by APA would not have been uniquely challenging to a person of ordinary skill in the art because it is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement" *KSR Int'l. Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) and it "does no more than yield predictable results." *KSR* at 1739.

Claim 30

See claim 17.

16. Claims 19, 31, and 32, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Georg in view of Shaw (US 7,401,865).

Claims 19, 31, and 32

Georg teaches the invention substantially as claimed. However, Georg does not explicitly teach the plastic material for forming the full load indicator.

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Shaw teaches the plastic material for forming the full load indicator in order to improve its resiliency (Shaw 2:52-63).

It would have been obvious to one having ordinary skill in the art at the time the invention to select plastic for forming Georg's full load indicator in order to improve its resiliency as taught or suggested by Shaw. *KSR, supra*. In addition, as noted, the selection of a known material based on its suitability for its intended use supported a *prima facie* obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945); *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960); MPEP § 2144.07; and *Ritchie v. Vast Resources Inc. d/b/a Topco Sales*, 90 USPQ2d 1668 (Fed. Cir. 2009).

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Rixon (spring 18) and Leone (FIG. 1).

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday, Tuesday, Thursday, and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vinh T Luong/

Primary Examiner, Art Unit 3656